

11th May, 1948.

UNITED NATIONS WAR CRIMES COMMISSION.

NETH 24

Trial of Horie Kenju

by a Temporary Court Martial at Macassar,

26th November, 1947.

(The following translation of the Judgment
has been made available to the Secretariat
by Commander M. W. Mouton, Netherlands
Representative on the Commission.)

Pro Justitia.

Criminal case No.T.Kr.21/1947.

S E N T E N C E

I N T H E N A M E O F T H E Q U E E N !

The Temporary Court-martial at Macassar in the case of the Prosecutor,
ratione officii, against

HORIE Kenju, aged 36, born at Shizoga Ken, Japan,
Lt.Commander in the Japanese Navy, former Adjutant
to the Commandant of the 23rd Special Naval Base
at Macassar. (in arrest).

In view of the order dated 10th September 1947 and issued by the Prosecutor,
submitting the case for trial by the Temporary Court-martial at Macassar,
in which order the accused is charged:

"That he, at Macassar as a subject of the enemy power Japan, about the
month of July 1945 therefore in time of war, caused about 216 Dutch,
English and American prisoners of war to be transported from Macassar
to Sourabaya under very bad conditions, at anyrate knowing that such
a transport was taking place he took no measures to prevent such, he,
the accused, having:

1. about July of that year given orders in the P.O.W.camp to the
commandant of the guard section Sub-Lieutenant YAMANAKA ASAO, to have
a number of P.O.W.'s ready for transport to another place:
2. on a later date on the quay at Macassar given YAMANAKA orders to
ship the aforesaid P.O.W.'s on board on oil-tanker belonging to the
Japanese navy:
3. repeated the order the following day at the same place and to the
same person;

while all the time the accused knew or could reasonably suppose:

- a. that transport on an object of war such as an oil-tanker a quarter
filled with petrol or other oil-fuel, in a period of continuous
activity on the part of the Allied air and sea forces offered very

little chance of-

little chance of success;

- b. that there was too little room on board and the P.o.W.'s had no opportunity of lying down;
- c. that insufficient food and drink would be served out to the P.o.W.'s;
- d. that there was insufficient protection against the sun and against waves sweeping the decks;

as a result of which circumstances mentioned under b to c inclusive, a number of P.o.W.'s became ill and one died shortly after arriving at Sourabaya;

at anyrate,

that accused, as a superior officer and adjutant to the commandant of the 23rd Naval Base at Macassar, knowing, or when he must reasonably have surmised, under what conditions P.o.W.'s were being transported by sea, took no measures to prevent such;

all of which facts are contrary to the laws and customs of war.

The accused having been ordered to appear at 10 a.m. on Wednesday, 6th October 1947, before the Temporary Court-martial at Macassar, sitting in the Palace of Justice in the Julianweg, Macassar.

In view of the serving of the above order dated 6th October 1947;

In view of the demand read out by the Prosecutor and then handed to the Court-martial, to the effect that the Temporary Court-martial at Macassar declare the accused

guilty of the war crime.: HORIE KENJU

"Transporting of prisoners of war overseas in an unauthorised way", and on that account sentence him to imprisonment for the term of TWENTY years, and shall ordain that the costs of the trial be borne by the State.

The accused having been heard in his denial of the charge;

In view of what has been dealt with at the sitting as has been recorded in the statement of the same;

In view of the documents in the case insofar as use was made of them and they read out to and seen by the accused;

In view of that brought forward in the defence of the accused by the latter's counsel;

CONSIDERING that at the sitting the statements strengthened by oath made during the general investigation by the witnesses F.W. KRUGER, J.C. van IERLAND, A.J. MOLANUS, SHIBATA YACHIRO, OTA MEMORU, YAMAMURA ASAO, YOSHIDA TOMONAO and UCHIDA YOICHI, were read out to and seen by the accused;

CONSIDERING that at the sitting OSUGI MORIKAZU, vice-admiral of the 23rd Special Naval Base at Macassar at the time in question, was heard in person;

CONSIDERING that three documents marked A, C and G-blue, being respectively the:

1. Commanding and-

1. Commanding and managing system of the Temporary compound in Macassar;
2. Report of responsible persons of the Temporary P.o.W. camp, Macassar;
3. Summary of administration of Temporary P.o.W. camp, Macassar;

were read out to and seen by the accused;

CONSIDERING that the following facts have been established by the above material evidence:

one day in July 1945 about 416 prisoners of war, mainly sick men and those recovering from illness, belonging to the P.o.W. camp situated in the village of Mariso, Macassar, and dressed in khaki or at least in dark clothing, were brought to the quay at Macassar and shipped in a Japanese tanker of about 4000 tons named the "DAI 16 NANSHIN MARU", which was partially filled with petrol.

As the ship was listing, this becoming worse when the P.o.W.'s embarked, orders were given to disembark, and attempts were made to right the ship. When this succeeded (the following day) about 216 P.o.W.'s were again driven on board the tanker, a group of about 200-250 Japanese soldiers and HEIHO's [an auxiliary force composed of new Japanese recruited in the N.E.I. and attached to the Japanese Army] which had meanwhile arrived on the quay having first been embarked. The P.o.W.'s sat tightly pressed against each other on deck and spent five days and nights like this; nobody could lie down. The ship left Macassar when darkness fell, was escorted by two Japanese destroyers and after five days zig-zagging along the Saleier-Madoera route arrived safely in the port of Sourabaya. Life on board was a hell for the said P.o.W.'s; they got half a mug of drinking-water per day per person; the food was all right the first day but after that they had to live on 30 ships biscuits per day and on 4 to 5 dessert spoonfuls of sugar in the 5 days. In the daytime the deck was red-hot from the heat, absolutely filthy with petrol mixed with lubricating oil, and if a breeze got up the waves dashed over the deck and everybody got dripping wet. Various P.o.W.'s were ill when they arrived at Sourabaya, among others OVERBEEK, van IERLAND, PAULIDES, LEEUWEN and Mr. LA RIEVIERE; Dr. HARTMAN died eight days later in Sourabaya from a heart-attack. All looked terrible; several had swollen legs, faces, and especially lips, from the sea-water. The Japanese on board had drinking-water in abundance and washed their faces in tea!

The aforesaid 216 P.o.W.'s sat on deck on a surface of about 70 square metres with 40 x 45 cm. space per man; a machine-gun was mounted on the forecastle and there were 2 anti-aircraft guns on the bridge. The tanker was painted grey and had no markings of any sort to show that there were P.o.W.'s on board. Once close by Madoera the Japanese crew took up their positions, obviously because danger threatened from the air!

CONSIDERING that it is a fact of general knowledge, therefore not needing any special evidence, that the Allied air and submarine activity, which particularly from the beginning of 1945 increased in intensity each time, was so violent in the Indian archipelago that no Japanese ship dare venture to go to sea during the day and only on moonless nights was there any chance of sailing;

CONSIDERING that the Court-martial knows from its own knowledge that the 9th Australian Division landed on Takaran on 30th April 1945; that the same division drove the Japanese from the oil port Balikpapan on 1st July (see also "De strijd in en rond den Stillen Oceaan (The battle of the Pacific Ocean), Melbourne 1945, N.E.I. publications service) and the inshipping at Macassar took place after the latter date as the accused himself also acknowledges, with the result that the Straits of Macassar and the Java sea were swarming day and night with Allied bombers and long-distance fighters, which latter were particularly dangerous to shipping, while Allied submarines were operating, especially by night, round and between Java, Sumatra, Borneo and Celebes;

CONSIDERING that -

CONSIDERING that accused has stated that he chose the safest route for the tanker, which was the southern one via Saleier and Madocra, for three reasons:

1. no enemy ships had been signalled on that route;
2. landings had already taken place at Balikpapan so that the 'planes were kept busy there in addition there were several small islands on that southern route and 'planes never operated in the neighbourhood of such;
3. there were several small islands for rescue purposes in case the ship was sunk, as sub-marines were ^{the} greatest danger near islands.

CONSIDERING that as against the above motives it can immediately be objected; that the signalling of surface ships can be followed within 24 hours by the signalling of battle fleets, as the war at sea in the Pacific has shown innumerable times (vide among others Admiral HALSEY's battle near the Strait of San Bernardino to the north of Leyte, pag. 20 of the publication already mentioned); that after the landings at Balikpapan Macassar was itself attacked almost at once by fighters, the attacks following an infallible time-table, 9 a.m., 12 o'clock and 4 p.m. (the Court-martial having personal knowledge of this); and finally, according to the accused the islands route offered at anyrate equally disastrous chances for the ship as did the other routes but did offer ^{more} chance of saving life for those sailing it, which however seems very problematic to the Court-martial;

CONSIDERING that if the transfer of the P.O.W.'s from Macassar to Java had occurred in the interests of these prisoners and necessity compelled their being taken by ship, then in the judgment of the Court this transfer by tanker was an unforgivable act as it certainly could not be expected that the Allies would let a tanker pass without bother, and also the indication, supposing that there had been such, that P.O.W.'s were on board would in all probability not have made the Allies hold back either;

CONSIDERING that whatever the rights of the case were there is no defending that fact that in July 1945 P.O.W.'s were carried in a ship, and that a tanker, from Macassar to Sourabaya, for the sole reason that if the Japanese authorities were afraid of ^{an} American landing in South-Celebes- rightly as it turned out later- the transfer of P.O.W.'s from the war zone to the Torajja countries would have been fully possible and would have been safe in every respect;

CONSIDERING that from what happened elsewhere the Court-martial thinks it may assume that the object of the P.O.W.'s being carried off was to prevent their falling into the hands of the Allies, and that this must be prevented at any price, as the Japanese were afraid of revenge, especially on the part of the Americans, when it was heard what had happened in the P.O.W. camps; there being further sufficient evidence to show that those P.O.W.'s who were still fit would be taken with them to the front by the Japanese, to be used there by the Japanese and finally done away with as soon as they were of no further use for war operations;

CONSIDERING that it must be stated here that the Court-martial does not consider it proved that the accused can be made responsible with regard to the charge of having known or suspected that insufficient food and drink would be given to the P.O.W.'s on board the tanker, seeing that this was the business of the ship's captain or the supply-service;

CONSIDERING equally that the Court does not judge that evidence has been produced showing that Dr. HARTMAN's death was a result of the circumstances charged under b. to d. inclusive, that under c. falling out as far as accused is concerned as has been considered above;

CONSIDERING that the nucleus of the charge will now be reviewed, namely that the accused caused prisoners of war to be transported in the way

mentioned, at-

mentioned, at least did not prevent this transport, he having given Lt. YAMAMAKI, commandant of the P.O.W. camp guard section, orders to have a number of prisoners of war ready for transport, as well as twice having given Lt. YAMAMAKI orders on the quay-side that the said prisoners of war must embark on the tanker;

CONSIDERING that it has been established during the sitting that accused gave the said orders, the accused himself having also acknowledged this;

CONSIDERING however that the accused has advanced that this order was based on one from higher up which he had to carry out, he not being competent to alter or not to follow up this order;

CONSIDERING that in this connection the accused has stated: the order to transport the prisoners of war to Java on the tanker "DAI 16 NANSHIN MARU" came from the naval commandant at Sourabaya; it was a telegraphic order and in the telegram appeared that when the "DAI 16 NANSHIN MARU" returned to Sourabaya the following must go on her:

1. men of the 2nd Japanese army;
2. the so-called MOENA group (P.O.W.'s from Moena);
3. prisoners of war belonging to the Japanese navy at Macassar, if there was still place for them on board.

It was said in the telegram that a total of about 500 men must go with the ship. This telegram was sent to the 102nd Naval Transport Section, Macassar branch, the head of which was Captain IDE YASUTA.

The tanker belonged to the Japanese army and came under the orders of the army transport service of which Major OGAWA was the head.

With regard to the tanker sailing with the object mentioned, accused had advised the commandant of the Naval Base at Macassar that it was not dangerous. He had also not advised against this transport because the order came from Sourabaya. He chose the safest route, namely the southern one via Saleier and and Madoera (see above).

CONSIDERING that this giving of advice on the accused's part resulted from his duties as head of sea transport, the accused having the duplicate function of:

1. Adjutant to the Naval Commandant;
2. head of the sea transport section;

CONSIDERING that the accused has stated in detail what precisely came under these functions, this in short coming to, that as Adjutant he was the Naval Commandant's right-hand, having also to carry out orders given by the latter, and that as Transport Officer he had an advisory role, particularly as regards routes to be followed by ships; therefore in both functions the accused could make no independent decisions;

CONSIDERING that the accused gave further precisians about these functions, namely that as Adjutant he passed on (or himself took along) orders given by the Naval Commandant, but could himself give no independent orders; and that as Transport Officer he certainly did give advice which, as he was an expert navigation officer, was generally followed; but that the final decision as to whether a ship was to sail or not, or was to sail another course than that he advised did not lie with him and so he bore no responsibility in the matter;

CONSIDERING that the Court is of opinion that the accused is quite right with regard to the above, this having been also confirmed by witness OSUGI MORIKAZU, vice-admiral and commandant of the Macassar Naval Base;

CONSIDERING that accused's functions fell within the Naval hierarchy and this being so a superior in rank had in theory more powers than an inferior;

CONSIDERING however-

CONSIDERING however that in practice this hierarchy tolerated exceptions, being compelled thereto - especially with war operations - because it has been shown, particularly in the present war, that personal initiative is necessary even on the part of the ordinary soldier or sailor, it being understood however that the chief remains equally responsible;

CONSIDERING that the accused's task and responsibility both as adjutant and transport officer must be looked at also in this light, as has been shown from the investigation at the sitting, namely, that as adjutant he enjoyed considerable independence, especially in the absence of the naval commandant, and as transport officer had so much to say on the grounds of his navigational training and practical experience that almost everything concerned with transport by sea was entirely left to the accused, as explained clearly and in detail by witness OSUGI;

CONSIDERING that accused understood this very well which could be clearly seen from his hesitating and varying answers to the question, in which quality did he give orders from superiors or, as he wishes it to appear, pass on a superior order;

CONSIDERING that witness OSUGI declared among other things that he was not there at the time the ship left, which the accused denies obstinately, in which case the adjutant - here accused - as was shown in practice could act independently; and even if witness OSUGI in order to cover himself is not speaking the truth on this point, then the accused as transport officer enjoyed independence to such a degree that the P.O.W. transport in question was left to him entirely;

CONSIDERING that the accused originally stated that the order on the quay-side to embark was given by him as adjutant but after a lengthy hesitation changed this to "as transport officer", by doing which the accused, in the opinion of the Court, has acknowledged his guilt - though probably without knowing it - on the grounds that as transport officer and pre-eminently an expert in the matter he occupied a much stronger position than as adjutant, which was not at all a position for an expert but which took its importance from being that of confidant and right-hand to the Naval Commandant.

In theory the oldest officer on the staff held the intermediate post as deputy Naval Commandant; he however, even as the Naval Commandant himself, will have deferred to him [accused] in his quality as an expert transport officer.

CONSIDERING that it has been satisfactorily established that the order from the Naval Command in Sourabaya was couched in the general term: "as soon as there is an opportunity of shipping", which must be understood as, "as soon as a suitable ship is available", i.e. "to take prisoners of war from Macassar to Sourabaya".

CONSIDERING that the carrying out of this order must therefore be entirely placed to the responsibility of the Naval Command at Macassar, all the blame falling on the accused who, as repeated above, was the man actually responsible for carrying it out, it being understood that in theory the Commandant or the oldest officer on the staff must bear the ultimate responsibility;

CONSIDERING that when the accused was on the quay for the embarkation - this occurred twice - he must with his own eyes have seen in what an inhuman way the P.O.W.'s were stowed away and himself can have noticed in what a bodily condition most of the said P.O.W.'s were;

CONSIDERING that the accused ought then to have realised once more what risks for the P.O.W.s were attached to such a transport, all of which should have restrained him from giving the order to embark;

CONSIDERING that-

CONSIDERING that on grounds of the above evidence the Court-martial considers it legally and convincingly proved that the incriminating acts as given above were committed, producing the crime to be qualified in the dictum - and that accused is guilty thereof, wherefore he deserves to be declared guilty and sentenced to punishment;

CONSIDERING with the regard to the punishment, that the Court will take into consideration that in spite of the reckless undertaking the tanker arrived safely and without incidents in Sourabaya harbour and that the accused, under the threat of the landings taking place in South Celebes, probably took more risks than would have been the case in quieter times, while there was equal risk for the Japanese troops on board, so that here a lenient punishment should be awarded;

In view of Statute books 44, 45, 46 and 47 -1946:

ADMINISTERING THE LAW:

IN THE NAME OF THE QUEEN

Declares the accused:

HORIE KENJU,

guilty of the war-crime:

"Causing prisoners of war to be transported over sea in an irresponsible manner";

Sentences him therefore to, ELEVEN years imprisonment;

Maintains the decision that accused be kept under arrest;

Declares that the costs of the trial be borne by the state;

Sentence passed on 15th October 1947 by

Lt.Col. Dr. N.M. VELLENGA
Capt. Abdullah daeng MAPPOEDJI)
1st Lieut. Dr. H.J.A.M.E. PAYENS)

President

Members

in the presence of
1st Lieut. Dr. J.H. HORNUNG
all of the Infantry Reserve,
and summoned up and decreed the same day.

Secretary

The members,
s/ Abdullah
Payens

The president,
s/Vellenga.

The secretary,
s/Hornung.

No. 20/69/2.

Fiat of execution granted.

Macassar, 20th November 1947.

The Resident of South Celebes,
s/Dr. C. Lion Cachet.

Pronounced on 26th November 1947 in open session of the Temporary Court-martial by Lt. Col. Dr. N.M. VELLENGA, president, in the presence of Capt. J.A. van Dijk and 1st Lieut. Dr. H.J.A.M.E. Payens, members, 1st Lieut. Dr. J.H. Hornung, secretary, all of the Infantry Reserve, Dr. F.M. Sinnecker, prosecutor, as well as in the presence of the accused and his counsel.

The Secretary,
s/Hornung.

The President,
s/Vellenga.